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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,752	06/01/2007	Conor O'Brien	FRKEL-007PUS	3736
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DALY, CROWLEY, MOFFORD & DURKEE, LLP SUITE 301A 354A TURNPIKE STREET CANTON, MA 02021-2714				
EXAMINER				
NGUYEN, PHUNG				
ART UNIT		PAPER NUMBER		
2612				
NOTIFICATION DATE		DELIVERY MODE		
07/08/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@dc-m.com
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Office Action Summary

Application No.

10/599,752

Applicant(s)

O'BRIEN, CONOR

Examiner

PHUNG NGUYEN

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 2-6 and 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Regarding claims 8, 9, and 16: The examiner interpreted the limitation “A computer program product” as a storage device (e.g., CD-ROMs or compact disk-read/write) for storing electronic instructions.

Claim Objection

2. Claims 2-6, 9, and 11-14 are objected to because of the following informalities:

Regarding claims 2-6, line 1, change “A device” to --The device--

Regarding claim 9, line 1, change “A computer program product” to --The computer program product--

Regarding claim 11-14, line 1, change “A system” to --The system--

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al. (US 7454002).

Regarding claim 10: Gardner et al. disclose integrating personal data capturing functionality into a portable computing device and a wireless communication device comprising a global positioning system (GPS) module for measuring a geographical location of a user or a speed of a user, and a mobile telecommunications device having an active communication link,

in use, with the GPS module, the mobile telecommunications device being updated regularly with the position of or speed of the GPS module (col. 6, lines 10-16). Gardner et al. do not specially disclose the mobile telecommunications device being provided with computer program means for calculating, from said position or speed, an exercise level of the user in terms of aerobic capacity. Since Gardner et al. teach a computer program (col. 6, lines 39-48), and the information concerning their exercise level (col. 1, lines 50-53), it would have been obvious to the skilled artisan to recognize that the device of Gardner et al. does have the computer program means for calculating, from said position or speed, an exercise level of the user in terms of aerobic capacity.

Regarding claim 11: Gardner et al. disclose a remote monitoring computer in communication with the telecommunications device, said computer being adapted to receive and process exercise data received from said telecommunications device over a mobile telecommunications network accessed by the telecommunications device (fig. 1A, col. 4, lines 10-16 and 54-60).

Regarding claim 12: Gardner et al. disclose wherein the GPS module is integral to the telecommunications device as shown in figure 1C.

Regarding claim 13: Gardner et al. disclose wherein the GPS module is provided as an accessory for the telecommunications device (see fig. 1C).

Regarding claim 14: Gardner et al. do not disclose wherein the GPS module is a separate GPS unit sharing a compatible communications link with the telecommunications device. Since Gardner et al. teach the use of the GPS unit (figure 2), it would have been obvious to one of ordinary skill in the art to modify the system of Gardner et al. to have the GPS module

is a separate GPS unit sharing a compatible communications link with the telecommunications device if desired because they perform the same function.

Regarding claim 15: All the claimed subject matter is already discussed in respect to claim 10 above.

Regarding claim 16: All the claimed subject matter is already discussed in respect to claim 10 above.

Allowable Subject Matter

5. - If applicant can overcome the objection above, it appears claims 2-6, and 9 would be allowable.

- Claims 1, 7, and 8 are allowed.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung T Nguyen whose telephone number is 571-272-2968. The examiner can normally be reached on 8:00am-5:30pm Mon thru. Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu can be reached on 571-272-2964. The fax numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

/PHUNG NGUYEN/

Primary Examiner, Art Unit 2612

Date: June 30, 2009

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